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IN THE

Supreme Court of the United States

October Term, 1941

No. 657

JOHN C. GEIGER,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Respondent.

RESPONDENT'S BRIEF.

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RESPONDENT'S BRIEF.

Foreword.

Copy of the record which was to be filed by the petitioner in the above entitled proceeding was served upon the respondent prior to the date of filing it in this court. We have been served with no notice of such filing. On October 10th, 1941, we were served with notice of filing in Docket No. 683. Being informed at the time of signing the receipt for such notice that it was notice of filing application for certiorari from the judgment of the Appellate Department of the Superior Court in the appeal matter, we addressed a letter to the Clerk of this Court concerning the record in such matter. On October 22nd, 1941, we received his reply, which informed us that Docket No. 683 covered the application for certiorari upon the order of the Superior Court denying petitioner's

release upon habeas corpus and that the appeal matter was filed as Docket No. 657. That was the first information we had that both records had been filed. We asked the Clerk whether his record showed that we had been served with notice of filing papers in Docket No. 657, and he advised that the record had been filed on September 26th, 1941, and that our time in which to file a brief commenced running on that date. His reply, received October 27th, 1941, was the first notice we had of the date of filing papers in this Court. It was our understanding of the rule that our time in which to file a brief commenced to run from the date on which we received notice of the filing of the record. We shall refer to this matter in our arugment on objections to jurisdiction.

Statement of the Case.

This proceeding is an application for certiorari to the Appellate Department of the Superior Court of the State of California, in and for the County of Los Angeles, hereafter called the Appellate Department, asking said court to review the action of such court in an appeal from the judgment of the Municipal Court of the City of Los Angeles.

The petitioner was charged in said complaint with the offense of vagrancy (violation of subdivision 5 of Section 647, Penal Code of the State of California). The complaint was filed April 15, 1941, and defendant was arraigned on that date, at which time trial was set for May 12, 1941. On May 12th he appeared in court without counsel and announced he was ready to proceed to trial without counsel, and waived trial by jury. The court, after such announcement and waiver, appointed the deputy

public defender to assist the petitioner. Trial then proceeded and the defendant was convicted, and, on May 19th, judgment of imprisonment was pronounced.

Petitioner had been released upon bail after his arrest and before arraignment, and remained at liberty on bail at all times from April 15th until after completion of the trial on May 12th. On May 19th notice of appeal from the judgment was filed. Such appeal was perfected and file was transmitted to the Appellate Department of the Superior Court.

The facts and dates stated above are shown upon the certified copy of the docket of the Municipal Court made a part of the record on appeal in the Appellate Department. Petitioner failed to include that portion of the record of the Appellate Department in his record. For the purpose of supporting our brief, and not for the purpose of curing petitioner's record, we transmit herewith a certified copy of such record, and also print the same in our brief as "Supplement A".

In our argument upon our objections to jurisdiction we shall discuss in more detail not only the failure of petitioner to include such part of the record in his papers but also the fact that several of the papers included by him in his record are not properly certified.

After the file was received in the Appellate Department the case was argued and submitted, and on June 19, 1941, the judgment of the Municipal Court was affirmed. (See copy of order affirming judgment in file.)

Summary of Argument.

I. Objection to jurisdiction upon the ground that the record submitted is not only incomplete but is not prepared in the manner provided by rules of this Court.

II. The petitioner has not been denied the right of counsel.

III. Subdivision 5 of Section 647 of the Penal Code of the State of California is not unconstitutional.

I.

Objection to Jurisdiction Upon the Ground That the Record Submitted Is Not Only Incomplete but Is Not Prepared in the Manner Provided by Rules of This Court.

The petitioner has failed to observe the rules of this Court in preparing his record. Examination of the papers attached to the petition in this case discloses that there is attached thereto

(1) a copy of a complaint filed in the Municipal Court of the City of Los Angeles;

(2) a copy of a motion for new trial filed in such court;

(3) a copy of an affidavit by John C. Geiger filed in such court, and

(4) a copy of the minutes of such court on May 19, 1941;

each of which is certified by the Clerk of the Municipal Court as being true copies of the papers on file in such court. Such certification does not in any wise show that such copies are copies of papers constituting the record on appeal in the Appellate Department.

Following the above named papers in the record submitted by the petitioner we find:

(a) copy of notice of appeal;

(b) copy of engrossed statement on appeal;

(c) copy of decision and order of the Appellate Department;

(d) copy of petition for rehearing, and

(e) copy of order denying petition for rehearing;

each of which is certified by the County Clerk to be true and correct copies of the papers named.

The last named papers are not certified to be, and do not purport to be the complete record on appeal in the Appellate Department in the matter of the appeal of John C. Geiger from the judgment of the Municipal Court of the City of Los Angeles. In truth and in fact they do not constitute the entire record.

Rule 3 of Judicial Council Rules, criminal appeals to superior courts from municipal courts, which designates the papers to be included in the record on appeal, is printed in the appendix hereto, page 9.

Examination of the record submitted by petitioner discloses that such record does not show the entry of jury waiver on the docket, as is required by Item 3 of the rule named, and does not show "all other minutes of the court relating to the action", as is required by Item 5 of such rule. The only purported minutes included in the record submitted by petitioner are for May 19th, and they do not purport to be a copy of part of the record sent to the Appellate Department.

Subdivision 1 of Rule 38 of this Court provides that petition for certiorari shall be accompanied by a certified transcript of the record in the case, including the proceedings in the court to which the writ is asked to be directed.

This Court, upon granting a petition for certiorari to a state court, requires that the record of such court accompany the petition. This Court is to review the action of a certain state court. Whether such court erred must be determined from examination of the record of that court, and not from a record assembled by petitioner and consisting of papers secured by him from the records of various courts, some of which may or may not have been included in the files of the court whose decision is to be reviewed. (*Atherton v. Fowler,* 1 Otto 143, 91 U. S. 143.)

This Court should not take jurisdiction of the instant proceeding for a further reason. Petitioner has failed to comply with the provisions of subdivision 3 of Rule 38 which provides for service upon respondent of notice of filing of the petition ten days after the same has been filed. As pointed out heretofore, the petitioner has never served us with such notice. By reason of fortuitous circumstances we learned that the record had been filed in this Court.

One who fails to give proper notice of time of filing to enable his adversary to prepare his brief is not entitled to serious consideration by the court. The fact that we received notice of filing another proceeding growing out of the same circumstances and acts of this petitioner which resulted in our acquiring knowledge of the fact of filing in this case should not excuse petitioner.

II.

The Petitioner Has Not Been Denied the Right of Counsel.

In our brief filed in *Geiger v. The People of the State of California*, Docket No. 683, we discussed this point quite fully. We see no good reason for reprinting here the argument submitted in that case. We therefore respectfully incorporate herein by reference the argument included in the brief filed in Docket No. 683.

III.

Subdivision 5 of Section 647 of the Penal Code of the State of California Is Not Unconstitutional.

This point has likewise been fully covered in our brief filed in *Geiger v. The People of the State of California*, Docket No. 683, and for the reason stated above we refrain from repeating such argument here. By reference, we incorporate herein the argument submitted in Docket No. 683.

Conclusion.

Respondent urges that there has been such violation of Rule 38 of this Court that the petition should be denied upon that ground. If, however, it be felt by the Court that such disregard of rules does not justify summary action by the Court, we nevertheless insist that the record affirmatively shows that the petitioner has suffered no injury and that his petition is without merit.

The petition for certiorari should be denied.

Respectfully submitted,

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W. JOS. MCFARLAND,
JOHN L. BLAND,
Counsel for Respondent.